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Hot Topic: Public Acts Affecting Cities

Dennis Huffer

Municipal Technical Advisory Service

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Hot Topics for Tennessee cities and towns

Attention City Contacts:

Due to the numerous subject matters included in this Hot Topic, it is not being generally distributed throughout city halls. Please make copies and distribute to the appropriate department heads.

August 6, 1999

#48

Public Acts Affecting Cities

By Dennis Huffer

Director of Legal Services
TML Risk Management Pool

The 1999 Tennessee General Assembly passed into law several acts that affect Tennessee municipalities. This Hot Topic summarizes some of these acts. However, do not rely solely on these summaries before giving advice or taking action. Refer to the act itself. MTAS will publish the complete *1999 Tennessee Public Acts* next month.

Alcoholic Beverages

Chapter No. 47 (SB1379/HB1270). Notice to beer wholesalers of annexation or incorporation. Amends *Tennessee Code Annotated* 57-6-103 to require the annexing or incorporating municipality to notify in writing each beer wholesaler selling beer within the annexed or incorporating area of the inclusion of a beer retailer within the corporate limits. The notice must include the name and address of each retailer brought into the corporate limits. The wholesaler must then remit the wholesale beer tax to the municipality for sales. Such remittance begins the month after receiving the notice.

This act provides that taxes paid to a county before Jan. 1, 2000, satisfy the wholesaler's obligation to pay taxes to an annexing municipality.

Effective date: Jan. 1, 2000

Annexation

Chapter No. 197 (SB1416/HB1036). Notification to election commission of annexation or district boundary changes. Amends *T.C.A.* 2-2-107 to require a municipality that has annexed territory or changed district or ward boundaries to provide the county election commission with: maps depicting the area; a copy of the ordinance or resolution making the change denoting, if applicable, which wards or districts the annexed or changed area will join; and a copy of the census taken for annexation, if available, with the names and addresses in the annexed area.

Effective date: July 1, 1999

City Courts

Chapter No. 502 (SB747/HB1540). Tax levied for rules of the road and parking space violations. Amends *T.C.A.* 67-4-602 and 67-4-604 for municipal courts to levy an additional litigation tax of \$1 in criminal cases involving violating the rules of the road and ordinances governing metered parking space usage.

Effective date: June 17, 1999

Contracts

Chapter No. 270 (SB840/HB1814). City manager's authority to make and execute contracts. Amends *T.C.A.* 6-19-104, part of the uniform city manager/commission charter, to allow by ordinance the city manager to make binding contracts on behalf of the city without specific board approval in routine matters and those without substantial long-term consequences (items costing less than \$10,000 during the fiscal year). The ordinance must list the types of matters this authority applies to and may limit the manager's authority.

Amends *T.C.A.* 6-21-108 to allow the city manager to execute contracts on behalf of the city when this authority is delegated by ordinance.

Effective date: May 26, 1999

Chapter No. 378 (SB949/HB808). Suspension of enforcement of actions arising from Y2K computer failures. Amends *T.C.A.* Title 47, Chapter 18 to suspend enforcement of contract, utility, and other commercial transactions that are rendered impossible or difficult to execute because of computer failures. Actions may be brought within 60 days of Jan. 1, 2000, or 60 days after the obligor has been notified of a default and the default has not been cured within 60 days.

Effective date: June 14, 1999; repealed Dec. 31, 2001

Education and Schools

Chapter No. 129 (SB892/HB675). School resource officers. Amends *T.C.A.* 49-6-4302 to authorize local education agencies to act in partnership with local law enforcement agencies in hiring school resource officers under the state grant program in *T.C.A.* 38-8-115, the Safe Neighborhoods Act of 1998.

Effective date: May 12, 1999

Elections

Chapter No. 197 (SB1416/HB1036). Notification to election commission of annexation or district boundary changes. Amends *T.C.A.* 2-2-107 to require a municipality that has annexed territory or changed district or ward boundaries to provide the county election commission with: maps depicting the area; a copy of the ordinance or resolution making the change denoting, if applicable, which wards or districts the annexed or changed area will join; and a copy of the census taken for annexation, if available, with the names and addresses in the annexed area.

Effective date: July 1, 1999

Fire Protection

Chapter No. 125 (SB508/HB436). Alternative funding for countywide fire departments. Amends *T.C.A.* 5-17-101 to allow counties to fund countywide fire service by allocating general fund revenues generated by situs-based taxes collected in unincorporated areas of the county or other revenues that have been shared with municipalities. This is an alternative to fire tax districts.

Effective date: May 12, 1999

Health and Safety

Chapter No. 347 (SB922/HB979). Graffiti removal. Amends *T.C.A.* Title 6, Chapter 54, Part 1 to declare graffiti a nuisance and authorizes municipalities to remove it from public property and private property visible from public property. If the graffiti cannot be removed, the municipality may repair or replace the necessary portion of the property. Consent must be obtained from the governmental entity with jurisdiction for publicly owned property. For private property, the owner and tenant (if there is one) must give written consent to remove the graffiti.

Graffiti removal is at the sole expense of the municipality. The municipality and property owner must agree on a method of removal. If they do not, the municipality may not act. The municipality may use persons ordered to work by the general sessions, criminal, or juvenile courts. The municipality and its officers and employees are granted immunity from damages when these individuals remove graffiti, repair or replace property, or fail in these efforts.

This act also authorizes the use of municipal funds for anti-graffiti education, a graffiti "hot line," and a reward under \$1,000 for information leading to a graffiti conviction.

This act must be implemented by ordinance, which may designate an administrative officer or body to perform graffiti functions.

Effective date: June 14, 1999

Law Enforcement — Confidentiality of Records

Chapter No. 319 (SB1894/HB1828). Identity of informant confidential. Amends *T.C.A.* 66-7-107(a) to make confidential the identity of any person who provides information that results in an eviction for prostitution or violating drug laws. The law enforcement agency may not make the identity public.

Effective date: May 26, 1999

Chapter No. 344 (SB868/HB1618). Confidentiality of records of domestic violence victims and witnesses with protection orders. Amends *T.C.A.* 10-7-504 to require utilities and allow municipalities to treat as confidential the home and work addresses, telephone numbers, Social Security number, and other information that could be used to locate an individual who has presented a valid protection order or document to the records custodian of the utility or municipality during regular business hours. The person must request that the information be treated as confidential. The protection order is presumed in effect if on its face it has not expired. The custodian must place the document in a file containing, in alphabetical order, all protection documents. Identifying information remains confidential until the person requesting confidentiality notifies the custodian in person that the information no longer needs to be confidential. After receiving this notification, the custodian must remove the protection document from the file. Before removing the document, however, the custodian must verify the identity of the requester.

Chapter No. 514 (SB1243/HB1818). Personnel information on undercover police officers. Amends *T.C.A.* 10-7-504 to provide that the address, home telephone number, and home telephone numbers of immediate family and household members of undercover officers be segregated and maintained in the chief's office. Information that may, in the chief's opinion, endanger the safety of the officer or his /her immediate family or household members may be deleted when the file is requested. If the person requesting the information disagrees with the chief's decision, it may be reviewed in a "show cause" hearing in Chancery Court. An employee may expressly authorize release of this information. This act does not limit access to this information by governmental entities nor does it extend to information that is not made confidential.

Effective date: June 14, 1999

Chapter No. 176 (SB647/HB575). Information about employees made confidential. Amends *T.C.A.* 10-7-504 to make the following information about employees and their families and household members confidential: unpublished phone numbers, bank account information, Social

Security numbers, and driver's license information except when driving is part of or incidental to the job.

The act requires that the above information be redacted when possible so other information in a personnel file is available.

It also provides that these records must remain available to law enforcement agencies, courts, and other agencies doing official functions and that public officers' records remain open.

Employees can authorize release of information made confidential by this act.

Effective date: May 18, 1999

Personnel

Chapter No. 202 (SB1597/HB1113). Discharge for failing or refusing to take a drug or alcohol test. Amends *T.C.A.* 50-7-302(a)(9) and *T.C.A.* 50-7-303(a)(2) to provide that a discharge resulting from a positive drug test or an alcohol test where the blood alcohol concentration is .10 percent or greater for nonsafety-sensitive positions or .04 percent or greater for safety-sensitive positions or the refusal to take a test, all as provided in the Drug-Free Workplace Program, will be deemed a discharge for misconduct that disqualifies a person from unemployment compensation.

Effective date: July 4, 1999

Purchasing

Chapter No. 269 (SB839/HB1815). Limit may be increased before public advertisement and competitive bidding required. Amends *T.C.A.* 6-56-306(a), part of the Municipal Purchasing Law of 1983, to allow municipalities by ordinance to increase the maximum purchase from \$5,000 to \$10,000 before public advertisement and competitive bidding are required.

Effective date: May 26, 1999

Chapter No. 382 (SB752/HB933). Electronic purchasing. Amends *T.C.A.* Title 12, Chapter 3, Part 7 to allow local governments to electronically distribute invitations to bid and requests for proposals. They may also receive bids electronically. Local governments may not require small businesses or minority-owned businesses to receive or respond to requests electronically.

Amends *T.C.A.* Title 12, Chapter 3, Part 10 to allow cooperative purchasing by local governments. The purchasing entity must comply only with its own purchasing requirements.

Amends *T.C.A.* Title 12, Chapter 3 to create an Advisory Committee for the Use of the Internet. One member is appointed by the Tennessee City Management Association and two are appointed by the Tennessee Association of Public Purchasing, which must select one municipal purchasing

officer and one county purchasing officer. Other members are state officials and a private citizen named by the governor.

Effective date: June 14, 1999

Records

Chapter No. 167 (SB1029/HB1813). Municipal records. Amends *T.C.A.* Title 10, Chapter 4 to remove references to municipal records from provisions dealing with county public records commissions. Places provisions on municipal records in a separate part.

Effective date: May 17, 1999

Chapter No. 304 (SB1539/HB1328). Electronic-mail policy required. Requires political subdivisions that have an electronic-mail communications system to adopt a written policy by July 1, 2000, on any monitoring of e-mail and the circumstances under which it will be conducted. The policy must include a statement that e-mail may be a public record and subject to public inspection.

Effective date: May 27, 1999

Solid Waste

Chapter No. 384 (SB1599/HB1115). Surcharge continued; reduction goals revised. Amends *T.C.A.* 68-211-835 to continue the 75 cent per ton surcharge on solid waste received at Class I disposal facilities until June 30, 2004.

Repeals *T.C.A.* 68-211-852, which required transporters of solid waste to register annually.

Amends *T.C.A.* 68-211-861 to change goals for solid waste reduction. The new goal is to reduce the amount of solid waste disposed of at Class I facilities by 25 percent by Dec. 31, 2003, using 1995 as the base year. As an alternative to calculating waste reduction on a per capita basis, regions may use an economic growth basis prescribed by the Tennessee Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. The act eliminates variances for failure to achieve goals. Noncompliance with the goals may lead to sanctions, such as loss of solid waste funds, civil penalties, etc. These sanctions can apply to offending municipalities.

This act authorizes the TDEC commissioner, with advice from the Solid Waste Advisory Committee, to develop comprehensive goals for a statewide system of solid waste programs. This system is to be in place for grants issued after July 1, 2000.

Effective date: June 14, 1999

Taxes — Business

Chapter No. 424 (SB1626/HB1191). Contractors doing work outside their home jurisdictions. Amends *T.C.A.* 67-4-708(4)(A) to require contractors to pay the business tax in the jurisdiction where the contract is performed when they receive \$50,000 or more in compensation for work outside their home jurisdictions. The domicile jurisdiction may impose no business tax on this activity.

Effective date: July 1, 1999

Utilities

Chapter No. 73 (SB1450/HB1099). Underground utility damage prevention — one-call service. Amends *T.C.A.* Title 65, Chapter 31, Part 1. This act:

- Requires excavators to serve an additional written or telephone notice of intent to excavate or demolish when 15 calendar days have passed since the excavation was scheduled to begin, and the excavation has not been completed. The notice must be given at least three working days before the expiration of time on the 15th calendar day.
- Eliminates individual notice to utilities in an area using one-call service.
- Prohibits utilities suffering damage as a result of not participating in a one-call service from recovering damages from the excavator if the excavator complies with this act.
- Eliminates exemptions of counties by population classification from authority to form one-call services.
- Requires excavators in an emergency excavation or demolition who observe clear evidence that there are unmarked utilities in the area to give additional notice to one-call. The excavator may then proceed with caution.
- Requires utilities in an emergency to mark utilities within two hours.
- Requires utilities in an impending emergency to mark utilities before the scheduled excavation. "Impending emergency" means circumstances potentially dangerous to life, health, property, the environment, or restoring service that would likely lead to an emergency.
- Makes violations a Class A misdemeanor subject to a fine not exceeding \$2,500 or jail for 48 hours or both.
- Allows stop-work orders for excavators violating this act.
- Frees excavators from damages caused to utilities because of a utility's failure to comply with this act.
- Provides penalties for persons removing stakes or markings.
- Requires use of safety purple for reclaimed water.

Effective date: July 1, 1999

Chapter No. 450 (SB1272/HB757). Utility relocation reimbursement and loans. Section 5 of this act amends *T.C.A.* 54-5-804(a) to require the Department of Transportation to reimburse local government utilities with 500 or fewer customers for all reasonable costs caused by utility relocations necessitated by state highway construction.

Section 6 of this act revises provisions of the Utility Relocation Loan Program. This section:

- Requires a utility seeking a loan to have established fees and charges to provide assurance of financial stability and to agree to adopt fees and charges to ensure timely payment and cover the costs of operating the system.
- Requires the utility to covenant to take necessary actions to pay all loan payments when due.
- Provides for an interest rate for loans based upon economic factors, including per capita incomes and property values.
- Eliminates requirement for interest-free loans for five years or fewer that was mandated under previous law. Provides that loans of five years or fewer may be recommended for no interest.
- Increases the allowable duration of loans from 10 to 15 years with no prepayment penalties.

Effective date: June 17, 1999

Chapter No. 452 (SB1616/HB1132). Utility relocations — penalties. Amends *T.C.A.* 54-5-854 relative to utility relocation for state highway projects. This act:

- Requires a utility to mark utility locations within 120 days, rather than the previous 90, after receiving project plans.
- Grants the DOT discretion to approve the utility plan and schedule even if they are reasonable.
- Requires the DOT to establish the date on which the utility may begin work and to reasonably notify the utility.
- Allows a utility that fails to agree on a reasonable plan and schedule to proceed under a reservation-of-rights notice. The notice must be filed within 10 days of a notice to proceed by the DOT. It must contain the utility's objections to the schedule and state reasons.
- Requires the DOT to reimburse the utility for all materials the utility has purchased that cannot be used as a result of a change that requires additional relocation.
- Allows the DOT to assess a civil penalty of \$250 per day against utilities with fewer than 3,000 customers that fail to meet the schedule. For larger utilities, the penalty can be \$500 per day.
- Does not allow civil penalties for delays caused by acts of God.
- Requires the DOT to furnish the utility with monthly progress reports during the relocation phase.
- Requires notice of the intent to assess a civil penalty and allows contest and appeal of civil penalties.

This act also amends *T.C.A.* 54-5-855 to provide that if DOT does not notify the utility of the date for beginning relocation within six months after the plan and schedule were submitted, the utility will be allowed to submit a revised cost estimate. If the DOT does not begin the project

within one year after approval of the relocation plan, the department must reimburse the utility for all engineering costs.

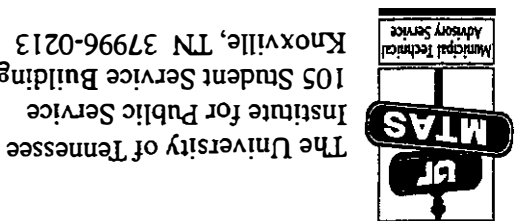
Effective date: July 1, 1999

Chapter No. 481 (SB1109/HB1032). Cable TV — municipal electric systems may provide.

Amends *T.C.A.* Title 7, Chapter 52 to allow municipal electric systems to provide cable TV service, two-way video transmission, video programming, Internet service, and similar services.

- A municipality may not provide cable service in any area where a private cable company serves 6,000 or fewer subscribers.
- Before deciding to provide cable services, the electric board must file a business plan with the comptroller.
- In a newspaper of general circulation, the board must publish a notice of its intent to offer additional services, along with notice for a public hearing.
- The board must conduct a public hearing.
- A two-thirds vote of the municipal governing body must approve the provision of the service, or a majority vote of the governing body may require a referendum to be held at a regular general election.
- The municipal electric system must establish a separate division to offer cable TV service. The division will not be considered a governmental entity for tort liability purposes.
- The electric system may lend funds to provide working capital for the system.
- The cable division is subject to pole-attachment agreements that are applicable to private providers.
- The division is subject to governmental finance and compliance audits conducted under enterprise fund accounting principles.
- The electric system must make tax equivalent payments with respect to cable TV service. In addition, the division must make payments in lieu of excise and franchise, sales, and local privilege taxes.
- A municipality may enter joint ventures to provide cable TV service.

Effective date: June 17, 1999



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105 Student Service Building
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